April 10th 1874

Motion to Dismiss

Denied

Rev. C. J.

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~543~~ 46

CHARLES T. POLLARD, PLAINTIFF IN ERROR,

vs.

JOHN F. BAILEY, ASSIGNEE IN BANKRUPTCY OF FOWLER & SOMMERVILLE.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE MIDDLE DISTRICT OF ALABAMA.

FILED DECEMBER 4, 1872.

Oct. Dec 1874

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1 May term, 1872.

At a district court of the United States for the middle district of Alabama, begun and holden at Montgomery, Alabama, on the twenty-seventh day of May, in the year of our Lord one thousand eight hundred and seventy-two—

Present, the Honorable Richard Busteed, judge of said court; John A. Minnis, esq., United States district attorney; and Robert W. Healy, United States marshal, by whom the court was duly opened, at 12 o'clock m., and the following proceedings had:

2 In the district court of the United States for the middle district of Alabama, May term, 1872.

JOHN F. BAILEY, ASSIGNEE, FOWLER & SOMMERVILLE, vs. CHARLES T. POLLARD.

FIRST COUNT. The plaintiff who sues as the assignee in bankruptcy of the estate and effects of Fowler & Sommerville, a firm lately composed of William Fowler and Robert H. Sommerville, claims of the defendant the sum of sixteen thousand nine hundred & nine dollars for this: That under and by virtue of an act of the general assembly of the State of Alabama, entitled "An act to incorporate the Central Bank of Alabama," approved February 17th, 1854, a corporation was duly organized and commenced business under the name & style of the Central Bank of Alabama; that between the 25th day of August, 1855, and the 5th day of October, 1861, said corporation issued its notes or bills, signed by its president and cashier, to be used and circulated as money; that on the 18th day of November, 1871, said firm of Fowler & Sommerville were the holders and owners of said sum of six-
3 teen thousand nine hundred & nine dollars of the said bills or notes of said bank which had theretofore come into their hands in the course of trade, and for a valuable consideration. All of said bills are payable to bearer on demand, are signed, and are of different denomination as follows, that is to say: three bills of five hundred dollars each, signed by William Knox, as president, and H. W. Carter, as cashier of said bank; fifty-two bills or notes of one hundred dollars each, thirty-six of which are signed by John I. Noble, as cashier, sixteen of which are signed by H. W. Carter, as cashier, and all of which are signed by William Knox, as president of said corporation; one hundred & eighteen bills or notes of twenty dollars each, one hundred & nine of which are signed by John I. Noble, as cashier, nine of which are signed by H. W. Carter, as cashier, and all of which are signed by William Knox, as president of said corporation;; three hundred and one bills or notes for ten dollars each, two hundred & twelve of which are signed by John I. Noble, as cashier, eighty-nine of which are signed by H. W. Carter, as cashier, and all of which are signed by William Knox,
4 as president of said corporation;; three hundred and sixty bills of five dollars each;; two hundred and fifty-eight of which are signed by John I. Noble, as cashier, and one hundred and two of which are signed by H. W. Carter, and all of which are signed by William Knox, as president of said corporation;; one hundred and four bills or notes of three dollars each, ninety-eight of which are signed by John I. Noble, as cashier, six of which are signed by H. W. Carter, as cashier,

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4 as president of said corporation; three hundred and sixty bills of five dollars each; two hundred and fifty-eight of which are signed by John I. Noble, as cashier, and one hundred and two of which are signed by H. W. Carter, and all of which are signed by William Knox, as president of said corporation; one hundred and four bills or notes of three dollars each, ninety-eight of which are signed by John I. Noble, as cashier, six of which are signed by H. W. Carter, as cashier,

and all of which are signed by William Knox, as president of said corporation; one hundred and seventy-four bills or notes of two dollars each, seventy-five of which are signed by John I. Noble, as cashier, ninety-nine of which are signed by H. W. Carter, as cashier, and all of which are signed by William Knox, as president of said corporation; four hundred and eighty-three notes or bills of one dollar each, one hundred & sixty-nine of which are signed by John I. Noble, as cashier, three hundred & fourteen of which are signed by H. W. Carter, as cashier, and all of which are signed by William Knox, as president of said corporation. Plaintiff avers that said John I. Noble and H.
5 W. Carter were respectively the cashiers, and the said William Knox was the president of said corporation at the times of the signing of the above-mentioned notes or bills as aforesaid.

And plaintiff avers that while said firm of Fowler & Sommerville were the holders and owners of said notes, as aforesaid, and on the 9th day of December, 1871, said last-named firm was declared bankrupt by the judgment and decree of the district court of the United States for the middle district of Alabama, under proceedings in bankruptcy for that purpose instituted in said court; and afterwards the plaintiff became, under said proceedings, and still is, the assignee in bankruptcy of said firm of Fowler & Sommerville, and as such is the holder and owner of said above-described notes or bills. Plaintiff avers that, before the said firm of Fowler & Sommerville became the holders and owners of said notes or bills above described, and before the plaintiff became the holder and owner of the same, as assignee aforesaid, the defendant became, and was, and has continuously been, the holder and owner of two hundred shares, of one hundred dollars each, of the
6 capital stock of the said The Central Bank of Alabama; that, by the charter of said bank, it is, among other things, provided "that the State and individual stockholders, or any copartnership or body-politic, having shares in said bank, shall be bound respectively for all the debts of the bank in proportion to their stock holden therein, &c."

Plaintiff avers that, by the premises and by force of the charter of said bank, as by a copy thereof duly authenticated now on file in this court, and which is made a part hereof, and will be produced on the trial of this cause, at large appears, the said defendant became and is liable to pay to the plaintiff, as assignee aforesaid, the said sum of sixteen thousand nine hundred & nine dollars.

Plaintiff further avers that said banking corporation has neither carried on business, had a place of business, or any officers or agents since the year 1868, and that for this reason, no demand has been made of said bank, or its officers or agents, for the payment of said above-described notes or bills; that, before the commencement of this suit, plaintiff demanded of the defendant payment of the notes or bills
7 hereinabove described, and that said defendant refused, and still refuses, to pay the same or any part thereof.

J. M. CHILTON,
Attorney for Plaintiff.

UNITED STATES OF AMERICA.

District court of the United States for the middle district of Alabama.

The President of the United States of America to the marshal of said district, greeting:

You are hereby commanded to summon Charles T. Pollard, who is a citizen of the State of Alabama, to appear before the hon. district court

aforesaid, at the place of holding said court, at Montgomery, on the fourth Monday of May, 1872, to answer the complaint of John F. Bailey, as assignee in bankruptcy of William Fowler and Robert H. Sommerville, (Fowler & Sommerville,) partners, bankrupts, who is a citizen of the State of Alabama; and have you then an' there this writ.

Witness the Hon. Richard Busteed, judge of the said court, the fourth Monday of November, in the year of our Lord one thousand eight hundred and seventy-one.

Issued the 6th day of May, in the year of our Lord one thousand eight hundred and seventy two.

[SEAL.] Attest: E. C. V. BLAKE,
Clerk U. S. District Court Middle District of Alabama.

Received in office this 6th day of May, 1872.

R. W. HEALEY,
U. S. Marshal.

Executed by serving copy of the within summons and complaint on the defendant, Charles T. Pollard, this the 6th day of May, 1872.

R. W. HEALY, *U. S. Marshal,*
By E. H. OLCOTT, *Deputy.*

No. 444.

An act to incorporate the Central Bank of Alabama.

SECTION 1. *Be it enacted by the senate and house of representatives of the State of Alabama, in general assembly convened*, That a bank be established in the city of Montgomery, the capital stock of which shall not exceed one million five hundred thousand dollars, divided into shares of one hundred dollars each, three-fifths of which capital may be subscribed for by individuals, and two-fifths of which shall be reserved for the State of Alabama.

SECT. 2. *Be it further enacted*, That subscription for stock in said bank shall be opened in such places as the commissioners to be appointed for receiving subscriptions to stock may designate, on the first Monday in April next, under the direction and management of nine commissioners, to be appointed by the governor, and who shall have authority to receive individual subscriptions for shares of stock, not to exceed the sum of five hundred thousand dollars. The said commissioners, or a majority of them, shall keep their books of subscription open for the term of thirty days, unless the said amount of five hundred thousand dollars be sooner subscribed, but the books shall, in every event, be kept open for ten days. The said commissioners shall give at least thirty days' previous notice of the opening of said books by advertisement in at least five public newspapers published in this State and elsewhere, in their discretion, and they shall keep a correct record of their proceedings.

SEC. 3. *Be it further enacted*, That, at the time of admitting such subscriptions for stock, the said commissioners shall require from the subscribers the sum of ten dollars for each share subscribed. The subscribers shall further pay an instalment of twenty dollars per share within ninety days after the day of first opening said books; of twenty dollars per share within six months after said opening day; twenty dollars per share within eight months after said opening day; and all payments of stock shall be made in gold or silver; twenty dollars per share within ten months after said opening day, and ten dollars per share

within one year of said opening day, but any subscriber may, if he think proper, pay in his subscription at earlier days than above limited, and in such cases interest shall be equalized with the other stockholders upon equitable principles. The said commissioners shall deposit all moneys received by them for safe-keeping in such bank or other place of deposit as the governor may direct, or, in default of such direction, as the commissioners may select, until the new bank shall go into
11 operation, after which payment shall be received by the bank itself. The commissioners shall have power to fill vacancies occurring in their own body by death, absence, or refusal to act, until their duty is performed.

SECTION 4. *Be it further enacted*, That, whenever the sum of two hundred thousand dollars shall have been subscribed to the capital stock of the said bank, whether by individuals alone, or by individuals and the State of Alabama combined, or in any other sum not exceeding in the whole one million five hundred thousand dollars, and after the closing of the books of subscription, and after half of the capital stock subscribed shall have been actually paid in gold or silver, the said bank may elect its officers, on the following conditions, to wit: the president and directors of said bank, thus appointed, shall, without loss of time, make the necessary arrangements to put the bank in operation so soon as, pursuant to the provisions of this act, the bank shall possess, in gold and silver, one-half of the capital stock subscribed; but
12 the said bank shall under no pretext whatever commence its banking operations by discounting bonds, bills, or notes, by loaning money or putting into circulation its own notes, until it shall actually and in good faith have in possession, of its own absolute property, in gold and silver, one-half of the whole amount of the capital stock subscribed, and shall have returned to the governor of this State an account thereof, certified by the oath or affirmation of the president and cashier for the time being; nor shall the said bank so commence its operations until the governor, satisfied by the return aforesaid, and by such other evidence as may be offered, shall issue a proclamation declaring that the return aforesaid had been duly made, and that it appeared to his satisfaction that said company had, of their own absolute property, the amount of gold and silver aforesaid, were authorized under the provisions of this act to commence their banking operations as aforesaid. If the said bank, without actually and in good faith having, of its own property, the amount of gold and silver, as aforesaid, or without having made a return thereof, as aforesaid, or without the
13 proclamation of *of* the governor, as aforesaid, shall commence any such banking operations as aforesaid, the charter hereby granted shall be null and void, and the said bank shall be considered, to all intents and purposes, as an unchartered bank; and if more subscription be offered to the commissioners than they are authorized to receive, they shall scale and allow the subscriptions in such mode as they shall deem equitable, giving, in all cases, the preference to subscribers who shall be resident citizens of Alabama; and, if still necessary, they shall reduce the largest subscriptions so as to form the proper amount of capital stock, and no more: *Provided*, That no other bank shall be allowed to take stock in said bank.

SEC. 5. *Be it further enacted*, That if on closing the books a sufficient capital shall not have been subscribed to authorize the bank to go into operation under the terms of this act, the commissioners may again open such books afterwards, at such times and places as they may direct, under the same regulations as above provided, until the subscription be

sufficient. After the bank-officers shall have been elected, if the
14 stock is not full, the board of directors shall have power to cause books to be opened from time to time until the stock and capital be full, and to appoint commissioners to receive such subscriptions, under such rules as they may prescribe: *Provided*, Thirty days' notice be given by advertisement, as above prescribed, of the time and place of receiving such subscriptions.

SEC. 6. *Be it further enacted*, That the State of Alabama may, when it shall elect to do so, take shares in the capital stock in said bank equal to two-fifths of its amount on paying a proportionable part of the capital, and on equal terms with the subscribers, equalizing interest on equitable terms with the stockholders as to time; and the said State shall, in case it take stock, be entitled to a proportion of power in the direction of the bank equal to its proportion of stock therein.

SECTION 7. *Be it further enacted*, That the stockholders of the said bank and their successors, when a sufficient amount shall have been subscribed and paid in, be, and they are hereby, created a cor-
15 poration and body-politic, by the name and style of the Central Bank of Alabama, and so shall continue until the first day of June, eighteen hundred and eighty-four, and by that name shall be, and they are hereby declared, able and capable in law to have and own, purchase, receive, possess, and retain, to them and their successors, lands, rents, tenements, hereditaments, goods, chattels, and effects of whatsoever kind, nature, and quality, moneys, obligations, stocks, bonds, bills, notes, securities and choses in action, of whatsoever nature; and the same may sell, grant, demise, alien, convey, or dispose of, and may sue and be sued, implead and be impleaded, answer and be answered, defend and be defended, in any suit, matter, or thing depending in any court of law or equity; and shall also have power to make, have, and use a common seal, and the same to break, alter, and renew at pleasure; also to ordain, establish, alter, and repeal by-laws, ordenances, and regulations, as they deem necessary and convenient, from time to time, for the government of said corporation, not being contrary to the Constitution and laws of the United States, or the State of Alabama; also to make loans,
16 discounts, and deal in money and notes, bills of exchange, bonds, mortgages, and securities of all kinds; to receive deposits, to make and issue bank-notes, payable on demand to bearer, and to make all contracts, and to transact all such business as is usually transacted by banks, and as are within the scope of banking operations, and generally to do and execute all and singular the acts, matters, and things which to them it shall appertain to do as incident to bodies corporate; subject, however, to the rules and limitations herein contained: *Provided*, The said bank shall not, in any case, deal or purchase merchandise, produce, or personal property of any kind, or real estate except for its necessary banking-houses, buildings, and purposes, or by way of securing payment of the debts due to it; nor shall it issue or cause to be made, for circulation as currency, any notes or bills that are not payable on demand.

SECTION 8. *Be it further enacted*, That the officers of said bank shall be managed by ten directors elected annually by the stockholders of said bank, and appointed by the governor of the State of Alabama, on behalf of the State, if the State shall subscribe
17 for stock, and if not, then to be elected by the stockholders alone. At all elections the stockholders shall elect the whole ten directors, or a number proportioned to the number of shares held by them collectively, as the case may be, allowing the State to appoint a num-

ber proportionate to its stock. And the directors appointed by the stockholders shall be those who shall have received a plurality of the votes given at elections by stockholders. And the directors in said bank shall be *elected* at all meetings of the stockholders, and all election' for directors, to one vote for every five shares owned by them. No stockholder can be a director who is at the same time a director in any other bank. The stockholders shall be entitled to vote either in person or by proxy; and at all meetings of the stockholders a majority of the stock paid in must be represented. The shares of infants may be voted for by their parents and guardians; if married women, by their husbands or trustees; if corporations, by their president; if copartners or joint owners, by either, unless the other dissent, in which case neither shall vote; and all powers to authorize persons to vote by proxy shall be in writing.

18 SEC. 9. *Be it further enacted*, That the first election for directors shall be held so soon as may be after the books of subscription shall be closed, and a sufficient number of shares subscribed. The said commissioners appointed to receive subscriptions, shall hold said first election on such day as they may appoint, after giving thirty days' notice of the time and place of holding the same; they shall certify to the directors the names of the persons elected; shall hand over the records to them, and the money subscribed and paid. The said board, so elected and appointed by the governor, if the State at any time becomes a stockholder, shall proceed to elect a president from their own number, and the board shall continue in office until the second Monday in January following, and until their successors shall enter upon their duties. The subsequent elections for directors shall be held at the banking-house, on the second Monday in January in each year. The new board elected shall be authorized to enter upon its duties on
19 the day after, and continue until the expiration of the second Monday in January next thereafter, and until their successors shall organize and enter upon their duties. The polls shall be held by three stockholders, other than directors, appointed by the board to hold the same. The votes shall be by ballot, under such regulations as the bank shall prescribe, but ten days' notice of such election shall be given in two public newspapers of the county in which said bank is located. No stockholder shall vote at any time while in default of the payment of his instalments of stock, as required by law and the regulations of the bank.

SEC. 10. *Be it further enacted*, That no person shall be a director on the part of the stockholders, unless he shall own one thousand dollars' worth of stock in the said bank, bona fide and as his own property, nor unless he shall be a resident citizen of the State.

SEC. 11. *Be it further enacted*, That, in case no election shall be made of directors or president at the times provided by this act, the
20 corporation shall not be for such cause deemed dissolved, but such election shall be had so soon as may be thereafter, on due notice. The board shall have power to fill all vacancies in the office of president and of directors elected by individual stockholders, and the governor shall fill vacancies on the part of the State, to serve until the next board shall organize. Six months' absence, removal from the State, transfer of stock down to a less sum than one thousand dollars, and any cause which shall prevent the attendance of such officers permanently to discharge the duties or render him incapable of so doing, shall vacate the seat of such president or director.

SECTION 12. *Be it further enacted*, That the president and directors

of said bank shall have power and authority to appoint a cashier, and all such officers, clerks, agents, and servants as may be necessary, from time to time, to carry on the business of the bank, and to prescribe their compensation and duties, and to require proper bonds and securities for the faithful discharge of their duties, in their discretion,
21 and to issue bank-bills, payable to bearer on demand, at their banking-house.

SEC. 13. *Be it further enacted*, That the shares of stock in said bank shall be assignable and transferable, according to such rules as shall be instituted in that behalf by the by-laws and ordinances of the bank, and transfer-books shall be kept for that purpose: *Provided*, That in case of the failure of the bank, within six months after any such transfer or sale of stock, the party selling and the party purchasing said stock, shall each be held liable for the payment of the debts of the bank in proportion to the stock so transfer'ed: *Provided further*, That no transfer of stock shall be made so as to vest in any one stockholder a greater number than one-fourth amount of the whole number of shares subscribed for in said corporation: *And provided further*, That the bank shall have power to pass by-laws to prevent the assignment of shares by parties owing debts to said bank passed due, until such indebtedness be paid, and to withhold dividends due to persons so being in default, if they deem it proper.

22 SEC. 14. *Be it further enacted*, That if any person or persons, copartnership or body-corporate, *shall be* indebted to said bank, as maker, endorser, or guaranter, or as drawer or acceptor of any note, bill, or bond, whether made negotiable and payable at said bank or not, shall delay payment thereof, the said bank may move for judgment and award of execution against such debtor, in any court of record in the State where such defaulter may reside, or corporation so indebted be located, and such judgment shall be thereon rendered as may be lawful and proper: *Provided*, That the defendant, in such case, shall have at least thirty days' notice of such motion before the same is made, specifying what the demand is; that at the time of making such motion the bank shall produce and file a certificate of the president or cashier, under the seal of the bank, that the debt claimed is really and bona fide the property of the bank: *Provided further*, That if any defendant shall appear and contest the claim the court shall require the bank to
23 file its declaration, and the defendant his pleas, and to cause issue to be joined, in law or fact, to be tried instanter or during the term, as the court may direct, by jury or by the court, as the case may be, unless, on sufficient cause shown, it be necessary to continue the cause; and the court shall give judgment as may be proper: *And provided further*, That the summary remedy thus given shall not preclude any other mode of redress which may be lawful to enforce the rights of bank.

SEC. 15. *Be it further enacted*, That the said remedies given for the collection of debts due the bank, and in motions against the bank, no certificate shall be required to be filed as above set forth; and the court of record in the county in which said bank is located, having jurisdiction, shall hear motions for the recovery of all debts due by said bank; and in all suits against said corporation, service of process on the president or cashier shall be sufficient to bring the defendant into court.

SEC. 16. *Be it further enacted*, That the said bank shall be sub-
24 ject to the following rules and regulations, and they are declared to be fundamental articles in the constitution of the said corporation, to wit:

ARTICLE 1ST. The bank shall not commence operations until half the capital stock subscribed for be actually paid, in gold and silver, which amount, in no case, shall be less than two hundred thousand dollars.

ARTICLE 2D. That the State and individual stockholders, or any co-partnership or body-politic, having shares in said bank, shall be bound respectively for all the debts of the bank in proportion to their stock holden therein, and this provision shall in no wise affect or impair the provision of the thirteenth section of this act.

ARTICLE 3RD. The bank shall not be authorized to issue or have in circulation, at any one time, notes or bills of the bank to an amount exceeding three times the amount of its capital stock actually paid in, and in case of any issue greater than herein allowed, the president and directors, under whose administration it may happen, shall
25 be liable for the same in their natural and private capacities, and actions may be brought against them, or either of them, in any court, by any creditor of said corporation, and may be prosecuted to judgment, any condition or agreement to the contrary notwithstanding; but the corporation shall not, on account of this provision, be less liable and chargeable with said excess: *Provided*, That the president and such of said directors who may have been absent when excess was contracted or created, may respectively exonerate themselves from being so liable by forthwith giving notice of the facts, and of their absence or dissent, to the stockholders at a general meeting, which they shall have power to call for that purpose.

RULE 1ST. The bank may, at its option, receive in payment or on deposit, the notes of the banks of other States, but shall not pay out the same on loans, checks, orders, drafts, or discounts.

RULE 2D. The bank shall be required to procure, and always
26 keep on hand, gold and silver in proportion of not less than one-fourth of the amount of the bills it shall have in circulation, and if withdrawn shall immediately proceed to replace the deficiency.

RULE 3RD. No bill or note of a smaller denomination than one dollar shall be issued, received, or paid out by the bank.

RULE 4TH. The bank shall be required to receive money on deposit, and pay out the same to order, free of charge, in such sums as the depositors may direct: *Provided*, The bank shall not be required to pay deposits in less sums than fifty dollars, nor to receive them in less sums than one hundred dollars.

RULE 5TH. The bank shall not take, retain, or receive interest on notes at greater rates than the following, to wit: Upon paper running six months or under, not to exceed the rate of six per cent. per annum; upon paper running more than six months and not exceeding nine months, not to exceed the rate of seven per cent. per annum; upon paper running more than nine months, not to exceed the rate of eight per cent. per annum: *Provided*, That all paper held and owned by
27 said bank shall, after maturity, bear interest at the rate of eight per cent. per annum: *Provided, also*, That if the rate of interest shall be reduced in this State during the period of the charter of said Central Bank, said bank shall in no case charge a greater rate of interest than that fixed by law as the legal rate for the State of Alabama.

RULE 6TH. No director shall receive any emolument, but the president may receive such compensation as the stockholders shall, at a general meeting, assign him.

RULE 7TH. Not less than five directors shall constitute a quorum for the transaction of business, of whom the president shall always be one, except in case of sickness or necessary absence, in which case his place

may be supplied by another director, whom, under his hand, he shall depute for that purpose; and the director so deputed may do and transact all the necessary business belonging to the office of president of said corporation under the name of the president pro tem., during the continuance of the sickness or necessary absence of the president.

28 RULE 8TH. Two-thirds of the whole number of directors shall have power to authorize, at any time, any three or more of the directors to transact such business of the bank as may be specially confided to them, whose acts shall be as valid as if done by a full board of directors present at the doing thereof; but the directors constituting said two-thirds or more giving such authority, shall be liable for all acts done by the said three or more directors, as if they were personally present and concurring.

RULE 9TH. All officers of the bank, the president and directors excepted, shall be required, before they enter upon the duties of their office, to give bond and security such as the board shall approve.

RULE 10TH. Half-yearly dividends shall be made of so much of the profits of the bank as shall appear to the directors proper; but no dividends shall be paid as profits which shall trench upon the capital of the bank.

RULE 11TH. Once in every term of three years the directors shall lay before the stockholders at a general meeting, for their information, an exact, full, and particular statement of the condition and *of-*

29 *ficers* of said bank, showing the particulars of all suspended debts, and shall give all information to them required for a proper understanding of its true condition.

RULE 12TH. The directors shall have power to call a general meeting of the stockholders at any time they may deem necessary and expedient; and a number of stockholders, not less than thirty, who, together, shall be proprietors of five hundred shares of stock or upwards, may at any time call a general meeting of the stockholders relative to the institution, giving at least six weeks' notice in the newspapers of the city in which such bank is located of such meeting, and specifying the purpose or purposes thereof.

RULE 13TH. That said bank shall make to the comptroller of public accounts a return once in every twelve months of its true situation, showing the amounts of its assets and liabilities, and of what they consist; also a list of the stockholders of said bank, and a list of the shares owned by each.

RULE 14TH. The governor of the State shall appoint biennially three commissioners, whose duty it shall be to examine the

30 moneys and books, otherwise examine into the condition, and make report thereon within two months after their appointment. The bank shall furnish all information to the said commissioners necessary for an accurate examination, and shall pay to said commissioners four dollars per day each, not exceeding fifteen days each; and the commissioners shall each make affidavit before an acting justice of the peace that they have not, previous to the time of their visit, communicated to the officers of said bank the time when they would visit said bank for the purpose of examination as aforesaid; which affidavit shall be filed in the office of the secretary of state.

SEC. 17TH. *Be it further enacted*, That, by way of bonus for granting this charter, the said bank shall pay annually into the treasury of the State on or before the first day of November in each year, and while the bank shall continue banking business, an amount equal to twice

the taxation which may be assessed on every hundred dollars of the value of lands for the time being by the State on each share of
31 the stock of the bank, which shall be in lieu and composition of all taxation whatever by the State, county, city, or other authority on the capital stock or business of the bank: *Provided*, That all real estate owned by the bank shall be subject to any taxes, as if held by individuals.

SEC. 18. *Be it further enacted*, That whenever any bill or bills, notes, checks, or other issues of said bank are presented at the counter of the same for redemption, and the bank shall refuse to redeem the same, either in gold or silver, the cashier shall write across the back of such bill or bills, checks, or other issues, the word "Protested," with the day and date, and shall sign the same; and all such bills, notes, checks, or other issues so protested, shall draw twelve per cent. interest from the date of the protest, until the same shall be redeemed, together with the interest that may have accrued thereon; and if any such note, bill, check, or other issue be presented to said bank and payment refused, and said office' fail to note the same protested as above provided, such officer s refusing, and his securities, shall be subject to pay
32 double the amount of the demand offered and refused, to be recovered by the person aggrieved in any court of record in the county where said bank may be located.

SEC. 19. *Be it further enacted*, That no stockholder of said bank shall receive any loan from the bank, either directly or indirectly, until the whole of his stock shall be paid; and no stockholder, while any portion of his stock is unpaid, shall be otherwise a debtor to said bank; nor shall said bank, under any pretext, hold any stock purchased by it of the stockholder for more than six months from the date of said purchase.

SEC. 20. *Be it further enacted*, That if any debt or demand due from said bank for an amount exceeding one hundred dollars shall remain unpaid for more than ten days after proper demand, the holder of such debt may file a bill in the chancery court of the county or district in which said bank may be located, for the settlement of all the debt of the bank, if he elect so to do, and may, on proof by affidavit of such refusal to pay on demand, and of the continuation of such refusal, made to any chancellor or judge of any circuit court of the State, pray
3 an injunction to restrain the said bank and its officers from paying out, or in any way transferring or delivering to any person any money or assets of said bank, or incurring any obligation or debt until such order be vacated or modified; and if such chancellor or judge shall be of opinion that the debt is justly due, and that the bank has no just defence against the demand, and if it shall appear expedient an' necessary, upon the proof presented, in order to prevent fraud and injustice, he shall grant an order for such injunction: *Provided*, The bank shall have had such reasonable notice of the application as the chancellor or judge may prescribe, and shall not be able to show sufficient cause against the same; and the said judge or chancellor shall then proceed to enquire, on such further notice as he may prescribe, whether the said bank be solvent or not; and may require the officers of the bank to exhibit any and all of books, papers, accounts, assets, moneys, and effects, and to be examined on oath touching the sums before him, or a referee to be appointed by him;
34 and if it shall appear that the said bank is not clearly solvent, then he may make an order declaring the same to be insolvent, and requiring its affairs to be wound up and settled; and, further, if,

in his opinion, the safety of the creditors shall require it, such judge or chancellor may appoint a receiver or receivers to take charge of all the assets of the bank, and to close and settle its affairs, and may make all such orders for the accomplishing of the same safely, properly, and economically as the case may seem to require; but if it shall appear, on such examination, that the said bank is clearly solvent, or if there shall appear to be a deficiency of assets, and the bank shall procure and give good security for the payment of any deficiency which may exist, and that the assets shall prove sufficient to satisfy all the debts of the bank, to the satisfaction of the judge or chancellor, then no such receiver shall be appointed; and upon the payment of the debts complained of the injunction and proceedings shall be dismissed. Such order shall be made for payment of costs as the judge or chancellor shall deem just and proper, and the proceedings shall be returned and made of record in the chancery court of the county or district in which such bank may be located, and shall be subject to revision and correction by the supreme court as in other cases.

SECTION 21. *Be it further enacted*, That in case the said bank be found insolvent, and settlement of its affairs be ordered, as herein provided, the same shall be done upon bill filed in said chancery court, under the orders of the court and rules of chancery, and full distribution shall be made of the assets according to the rights of all parties; but the holders of bank-notes and obligations issued by the bank for circulation as money shall be first called in and paid, and shall have priority over debts due from the bank; and after the assets of the bank are exhausted, if they be not sufficient to pay all debts and liabilities, a further call shall be made on the shareholders in the bank for further payment of capital, over and above the sum of one hundred dollars, of an amount equal to the deficiency, which shall be apportioned among all the shares of stock as well of the individual holders as of the State; and an order shall be made by the court for the payment *of* each shareholder of the sum or proportion due on his shares of stock; and each shareholder shall pay the sum so assessed to him severally in proportion to his stock, which shall be collected by the receiver and applied; and in case the State holds stock in said bank, it shall provide for and pay its proportion of this additional capital in proportion to the stock so held in said bank, to be applied in like manner.

SECTION 22. *Be it further enacted*, That the summary remedy in this act, specially given for settling up and closing the affairs of said bank, shall apply to the case of insolvency, but shall not be allowed in case of a suspension only by the bank of specie payment, *when* so long as suspension shall be sanctioned by the general assembly, or the governor of the State during the recess of the general assembly; but nothing in this act contained shall be construed so as to deprive a creditor of said bank from his right to suit in any other appropriate mode of proceeding, or to prevent the general assembly from hereafter regulating, by a general law in relation to banking institutions, the mode of enforcing and satisfying the rights of creditors of said bank: *Provided*, Any bill-holder shall also have the right to move in any court having jurisdiction or before any justice of the peace in the city or county in which said bank is located, as the case may require, for the collection of any bill the payment of which may be refused.

SEC. 23. *Be it further enacted*, That notwithstanding the expiration of the time for which said corporation is created, it shall be lawful to use

the corporate name, style, and capacity, for the purpose of suits, and for the final liquidation and settlement of the affairs and accounts of the corporation, for the sale and disposition of its estate, real and personal, and collection of its assets; but not for any other purpose, nor for a period exceeding two years after the expiration of said term of incorporation.

Approved February 17, 1854.

OFFICE OF THE SECRETARY OF STATE
OF THE STATE OF ALABAMA,
Montgomery, Alabama, May 6th, 1872.

38 I, J. J. Parker, secretary of state of the State of Alabama, do hereby certify that the foregoing is a true and correct copy of an act of the general assembly of the State of Alabama, entitled "An act to incorporate the Central Bank of Alabama," approved Feb'y 17th, 1854.

In witness whereof I have hereunto affixed the great seal of the State of Alabama, and signed my name on this the 6th day of May, A. D. 1872.

{ GREAT SEAL } { OF ALABAMA. }

J. J. PARKER,
Secretary of State.

[U. S. rev. stamp, 2 dollars, canceled.]

Filed May 6th, 1872, at 5 p. m.

E. C. V. BLAKE, *Clerk.*

District court of the United States, middle district of Alabama.

UNITED STATES OF AMERICA:

JOHN F. BAILEY, AS ASSIGNEE OF FOWLER & Sommerville, plaintiff,
vs.
CHARLES T. POLLARD, DEFENDANT.

And the said defendant, by his attorneys, comes and defends the wrong and injury, when, &c., and says that the said declaration and the matters therein contained, in manner and form as the same are above stated and set forth, are not sufficient in law for the said plaintiff to have or maintain his aforesaid action thereof against the said defendant, and he, the said defendant, is not bound by law to
39 answer the same; and this he is ready to verify. Wherefore, by reason of the insufficiency of the said declaration in this behalf, the said defendant prays judgment, and that the said plaintiff may be barred from having or maintaining his aforesaid action thereof against him, &c.

And the said defendant, according to the form of the statute in such case made and provided, states and shows to the court here the following causes of demurrer to the said declaration:

1st. For that the plaintiff cannot maintain an action at law against this defendant as a stockholder in said Central Bank, to recover from this defendant the amount for which he may be liable in proportion to his stock holden therein; but his remedy is in a court of equity, where the equities of all parties interested can be adjusted.

2nd. For that the said declaration does not set forth the facts neces-

sary to the ascertainment of the proportionate amount for which this defendant is liable, or the amount which the plaintiff is entitled. It does not set forth the amount of debts owing by said bank nor
40 the amount of stock held in said bank.

3rd. For that the said declaration does not aver and set forth that said bank is insolvent.

4th. For that, under the provisions of the charter of said corporation as set forth in said declaration, the undertaking and liability of this defendant for the debts of said corporation is collateral—that of a guarantor—and sufficient facts to make this defendant liable as a guarantor are not averred and set forth in the said declaration.

5. For that, by the twentieth and twenty-first sections of the charter of said corporation, as set forth in said declaration, a special remedy is provided in case of the insolvency of said bank in favor of any creditor whose debt exceeds one hundred dollars, and the plaintiff is not authorized to resort to any other remedy against this defendant as a stockholder in said corporation.

6th. For that the said declaration does not aver that said bills were ever presented at said bank for redemption, and redemption thereof refused, and notice thereof given to the said defendant.

41 And, also, that said declaration is in other respects uncertain, informal, and insufficient, &c.

STONE & CLOPTON,
Att'ys for Def't.

We, counsellors of said district court, do certify that, in our opinion, the above and foregoing demurrer is well founded.

STONE & CLOPTON,
Att'ys for Def'ts.

Filed 23 May, 1872.

E. C. V. BLAKE, *Clerk.*

District court U. S., mid. dist. of Ala.

JOHN F. BAILEY, ASSIGNEE, &C.,
vs.
CHARLES T. POLLARD.

Comes the plaintiff and joins in the demurrer of the defendant in said cause.

ELMORE & GUNTER,
J. M. CHILTON,
Att'ys for Pl'ff.

Filed 28th May, 1872.

E. C. V. BLAKE, *Clerk.*

42 District court of the United States, middle district of Alabama.

JOHN F. BAILEY, AS ASSIGNEE OF FOWLER & Sommerville, plaintiff,
vs.
CHARLES T. POLLARD, DEFENDANT.

The said defendant comes, by his attorneys, and defends the wrong and injury, when, &c., and prays judgment of said declaration, because he says that heretofore, and before the exhibiting said declaration and commencement of this suit, to wit, on the 19th day of March, 1869, one

John G. French and others, holding and owning bills of the said Central Bank, to the amount of several thousand dollars each, in
43 accordance with the provisions of the twentieth section of the charter of said Central Bank, which is set forth in the complaint of the plaintiff, filed their bill of complaint in the chancery court for the county of Montgomery and State of Alabama, in which said county said bank was located, for a settlement of all the debts of said bank, and praying an injunction to restrain the said bank and its officers from paying out or in any wise transferring or delivering to any person any money or assets of said bank, or incurring any obligation or debts until such order be vacated or modified, which said injunction was granted & issued, and has not been vacated or modified; and, upon the hearing of said bill of complaint, the said chancery court, to wit, on the 25th day of November, 1869, at a regular term thereof, made an order declaring said bank to be insolvent, and requiring its affairs to be wound up and settled, and appointed a receiver to take charge of all the assets of said bank, and to close and settle its affairs.

And the said defendant further says that the said John G.
44 French, and said other persons, and said receiver, on the 5th day of September, 1870, filed another bill of complaint in said chancery court, on behalf of themselves and all the other creditors of said bank who might make themselves parties thereto, and contribute to the expense thereof, against the said defendant and divers other persons as stockholders in said Central Bank, which said bill was filed in accordance with and in pursuance of the twenty-first section of said charter of said Central Bank; and the purpose of said bill is to compel this defendant and other stockholders of said Central Bank to pay the debts of said bank in proportion to the stock therein held by each of said stockholders; and the said William Fowler was and is a party defendant to said bill of complaint, and was and is a stockholder in said Central Bank, owning and holding one hundred shares of the capital stock of said bank.

And the defendant further says that said last-mentioned bill of complaint is still pending and undetermined, and that said chancery court, by and in accordance with and in pursuance of the provisions of said charter of said bank, acquired and took jurisdiction of
45 winding up and settling the affairs of said bank, and of the liability of the defendant and other stockholders of said bank, for the debts of said bank; and the matter and liability of this defendant for said debts in said suit in said chancery court is the same matter and liability of this defendant which is involved in this cause; and this the said defendant is ready to verify. Wherefore he prays judgment of the said declaration in this suit, that the same may be quashed, &c.

STONE & CLOPTON,
Att'ys for Def't.

JOHN F. BAILEY, AS ASSIGNEE OF FOWLER & Sommerville, plaintiff,
vs.
CHARLES T. POLLARD.

I, Charles T. Pollard, the defendant in the foregoing-stated cause, makes oath that the plea hereunto annexed is true, in substance and fact.

CHARLES T. POLLARD.

Sworn to and subscribed before me this 18th day of May, 1872.
GEORGE H. PATRICK,
U. S. Commissioner, Mid. Dist. Alabama.

46 Filed 23rd May, 1872.
E. C. V. BLAKE, *Clerk.*

In the district court of the United States for the middle district of Alabama.

Comes the plaintiff, and for answer to the plea of the said defendant, says that the same is insufficient in law, and he demurs thereto, and for grounds of demurrer assigns the following:

1. That said plea does not aver any decree of the chancery court of Montgomery, in the suit therein mentioned, as having been commenced on the 5th day of September, 1870.

2. That said plea fails to show that the complainant in this case is a party to said suit mentioned in said plea as now pending in the said chancery court of Montgomery, and does not show how complainant is in any way concluded from the prosecution of his said suit on account of the pendency of said chancery cause commenced on the 5th day September, 1870, by said John G. French et als.

47 3. That it appears from said charter of said Central Bank that the said defendant was and is liable individually, both at law and in equity, for the debts of said bank in proportion to his stock, holden therein, & said plea does not aver or show any payment by said defendant, or any discharge of his liability for said debts, or any decree against him therefor.

4. That said plea fails to aver that said bank has any assets or had any at the time of the appointment of said receiver.

5. That the pendency of said chancery cause, as mentioned in said plea, is no bar to the prosecution of plaintiff's action against said defendant.

J. M. CHILTON,
ELMORE & GUNTER, *for Pl'ff*

48 District court of the United States, middle district of Alabama.

JOHN F. BAILEY, ASSIGNEE OF FOWLER & Sommerville, plaintiff,
vs.
CHARLES T. POLLARD, DEFENDANT.

First. The defendant comes, by his attorneys, and defends the
49 wrong and injury, when, &c., and says that he did not undertake or promise, in manner and form as the plaintiff hath thereof complained against him; and of this he puts himself upon the country, &c.

Second. And, for a further plea in this behalf, the defendant says actio non, because he says that heretofore, and before the commencement of this suit, to wit, on the 19th day of March, 1869, one John G. French and others, holding and owning bills of the Central Bank to the amount *to the amount* of several thousand dollars each, in accordance with the provisions of the twentieth section of the charter of the said Central Bank, which is set forth in the complaint of the plaintiff, filed their bill of complaint in the chancery court for the county of Mont-

gomery, in which county the said bank was located, for the settlement of all the debts of the said bank, and praying an injunction to restrain said bank and its officers from paying out or in any way transferring or delivering to any person any money or assets of said bank or incurring any obligation or debts until such order be vacated or modified, which said injunction was granted and issued, and which has not been vacated or modified; and upon the hearing of said bill of complaint, the said chancery court, to wit, on the 25th day of November, 1869, at a regular term thereof, made an order declaring said bank to be insolvent, and requiring its affairs to be wound up and settled, and appointed a receiver to take charge of all the assets of said bank, and to close and settle its affairs. And the said defendant further says that the said John T. French and said other persons and said receiver, on the 5th day of September, 1870, filed another bill of complaint in said chancery court in behalf of themselves and all the other creditors of said bank who might make themselves parties thereto, and contribute to the expenses thereof against the said defendant and divers other persons as stockholders in said Central Bank, which said bill was filed in accordance with and in pursuance of the twenty-first section of said charter of said Central Bank, and the purpose of said bill is to compel this defendant and other stockholders of said Central Bank to pay the debts of said bank in proportion to the stock therein held by each of said stockholders, and that said William Fowler was and is a party defendant to said bill of complaint, and was and is a stockholder in said Central Bank, owning and holding one hundred shares of the capital stock of said bank. And the defendant further says that said last-mentioned bill of complaint is still pending and undetermined, and that said chancery court, by and in accordance with and in pursuance of the provisions of the charter of said bank, acquired and took jurisdiction of winding up and settling the affairs of said bank, and of the liability of the defendant and other stockholders of said bank for the debts of said bank, and no other court has or can take and exercise jurisdiction of any of the matters and issues involved in said last-mentioned bill of complaint; and this the defendant is ready to verify, &c.

Third. And, for further plea in this behalf, says actio non to a part of plaintiff's demand, because, he says, the said William Fowler was heretofore, to wit, on the first day of January, 1856, and has been continuously ever since, and still is, a stockholder in said Central Bank, owning and holding therein one hundred shares of the capital stock of said bank, and is liable for the debts of said bank in proportion to the extent of his said stock, and the defendant, if liable at all in this suit, is liable only for his proportion, after deducting from the plaintiff's demand this amount of the liability of said William Fowler, for the debts of said bank; and this the defendant is ready to verify, &c.

Fourth. And, for further plea in this behalf, the defendant says actio non to a part of the plaintiff's demand, because, he says, that the capital stock of said bank amounted to a large sum, to wit, the sum of nine hundred thousand dollars, which was divided into shares of one hundred dollars each, only two hundred of which shares were held by this defendant, and the balance held by the said William *Powel* [Fowler] and many & divers other persons, and that the debts of said bank amount to a large sum, to wit, the sum of seven hundred thousand dollars, and the defendant, if liable to the plaintiff at all, is liable only for his proportion of the amount for which

the defendant is liable for all the debts of said bank; and this the defendant is ready to verify, &c.

STONE & CLOPTON,
Att'ys for Def't.

Filed 23rd May, 1872.

E. C. V. BLAKE, *Clerk.*

United States district court for the middle district of Alabama, May term, 1872.

JOHN F. BAILEY, ASSIGNEE, &C., *vs.* CHARLES I. POLLARD.

1. And the said plaintiff, as to the said first plea above thereof pleaded, wherein he hath put himself upon the country, saith that he doth the like.

2. As to the second plea, he demurs thereto; and, for grounds of demurrer, assigns the same grounds set out in the demurrer to the plea in abatement herein.

3. As to the third plea of the said defendant, above thereof
54 pleaded, the said plaintiff says that the same is insufficient in law, and demurs thereto, and, for grounds of demurrer, assigns the following:

1st. That this action is brought by this complainant, as the assignee in bankruptcy of the copartnership of Fowler & Sommerville, to recover assets of said firm; and said plea seeks to set off against the same a debt due by a member of said firm to persons other than the said defendant.

2d. Said plea only shows a right of contribution against said Fowler, in favor of the defendant, in the event of the payment, by the defendant, of the plaintiff's demand, and sets up said right as a bar to a recovery against said defendant.

3d. Said plea is indefinite, and does not enable said plaintiff to take judgement for the part of his demand in the declaration mentioned, not pleaded to in said plea.

4th. And for answer to the said fourth plea of the said defend-
55 ant, above thereof pleaded, said plaintiffs says that the said plea is insufficient in law, and demurs thereto, and, for grounds of demurrer, assigns the following:

1st. That it appears from the charter of said bank that the stockholders of said bank are liable to the creditors thereof, according to the amount of the stock of said bank held by them respectively, and without reference to the aggregate amount of the stock of said bank, and the aggregate amount of the debts of said bank; and that the said defendant, if liable at all, is liable to the extent of his stock therein.

2d. Because said plea pleads a conclusion of law instead of asserting facts, in this, that it avers, and offers to verify, a conclusion of law in reference to the liability of the said defendant to the said plaintiff.

3rd. Because said plea is indefinite, in this, that it does not purport to go to the whole of the plaintiff's declaration, and yet does not enable the said plaintiff to take judgement for the part not answered, by reason of not setting forth with certainty the part of the said plaintiff's demand to which said plea is intended to apply.

ELMORE & GUNTER,
J. M. CHILTON,
Att'ys for Pl'ffs.

56 *Agreed statement of facts.*

JOHN F. BAILEY, AS ASSIGNEE IN BANKRUPTCY of Fowler & Sommerville,
vs.
CHARLES T. POLLARD.

Pending in the district court of the United States for the middle district of Alabama.

It is agreed by the parties to the above-entitled cause:

First. That the plaintiff in this cause, John F. Bailey, is the duly elected and qualified assignee in bankruptcy of William Fowler and R. H. Sommerville, late partners in business under the firm-name of Fowler & Sommerville, and that said Bailey, as such assignee, is the holder and owner of the bills or notes described in the complaint in this cause.

Second. That the defendant in the above-entitled cause, said Charles T. Pollard, is the holder and owner of two hundred shares of the capital stock of the Central Bank of Alabama, of the nominal value of one hundred dollars per share, (the value fixed by the charter of said
57 bank,) and that said Pollard was the holder and owner of said stock before said Fowler and Sommerville became the holders and owners of said bills or notes.

Third. That said bank has had no place of business where, or officers or agents of whom, a demand for the payment of the notes or bills described in the complaint could be made, since said Fowler & Sommerville became the holders and owners of said notes or bills.

Fourth. That before the institution of this suit, said John F. Bailey, as assignee in bankruptcy as aforesaid, made a demand of said defendant, Charles T. Pollard, as the owner and holder of the stock of said bank, as aforesaid, for the payment of said notes or bills described in the complaint herein, and that said Charles T. Pollard refused to pay the same or any part hereof.

Fifth. That on the 19th day of March, 1869, (which was before the institution of this suit,) one John C. French and others, holding and owning several thousand *of* dollars of the bills or notes of said Central Bank of Alabama, issued by it to circulate as money, filed a bill in
58 equity in the chancery court of Montgomery County, in the State of Alabama, against the said Central Bank of Alabama, in compliance with, and praying for the relief authorized, by section twenty of the charter of said bank; that upon the filing of said bill the injunction authorized by said section twenty was granted and issued, and has never been vacated or modified; and upon the hearing of said bill said chancery court made an order on the 25 of November, 1869, declaring said bank to be insolvent, ordered its affairs to be wound up and settled, and appointed a receiver thereof, as authorized by said section.

Sixth. That afterwards, to wit, on the fifth day of September, 1870, the same persons who filed said original bill, filed another bill, a copy of which is hereto annexed and made a part hereof.

Seventh. It is admitted that neither said Fowler & Sommerville, or said John F. Bailey, are parties, complainant or defendant, to either of the bills in equity hereinbefore mentioned, and neither said Bailey or Fowler & Sommerville have appeared in either of said equity causes;
59 that said William Fowler was made a party defendant to said bill in his individual capacity and not otherwise; that said firm of

Fowler and Sommerville is largely insolvent on account of firm indebtedness, and bankrupt.

Eig'th. It is admitted that said Pollard has never paid off or discharged any liability which may have attached to him, under the charter of said bank, by reason of being the owner and holder of said two hundred shares of the stock of said bank.

Ninth. It is agreed that the paper on file in the district court of the U. S. for the middle district of Alabama, purporting to be a copy of the charter of said Central Bank of Alabama, is a true copy of the said charter, and may be deemed and taken to be part hereof, as if set out at full length.

It is admitted that the whole capital stock of said bank subscribed for amounts to nine thousand shares, and the whole amount of bills or notes of said bank outstanding and unpaid is seven hundred thousand dollars.

60 In chancery at Montgomery, Ala.

JNO. C. FRENCH ET AL.
vs.
CHARLES T. POLLARD, GEORGE GOLDthwaite, et al., stockholders in the Central Bank of Alabama.

To the Honorable A. C. Felder, chancellor of the 2d district of the southern chancery division of the State of Alabama:

Humbly complaining, show unto your honor, your orators, John C. French, who resides in the city of Nashville, State of Tennessee; Lawrence A. Spicer, administrators of all and singular the goods and chattels of James K. P. Pritchard, late of the city of Memphis, State of Tenn., now deceased; Julius C. Phillips, of the county of Lee, State of Ala.; Francis M. Fisk, of the city of New Orleans, State of Louisiana; J. D. Dawson, of the city of Louisville, State of Kentucky; Tho's O. Glasscock, and John Gano Winter, both of the city of Montgomery, State of Alabama; the Bank of Selma, a corporation duly incorporated by and organized under the laws of the State of Ala., and located at Selma,
61 in said State, all of whom bring this suit on behalf of themselves and all other creditors of the corporation doing business in the city of Montgomery, Ala., known as the Central Bank of Ala., who may hereafter make themselves parties to this bill, and contribute to the payment of the expenses of this suit; and James M. Newman, who joins in this suit, as the receiver of the said Central Bank of Ala., appointed by your honor to collect the assets of said bank, as will more fully appear from the order of appointment now on the records of your honor's court, and to which reference is made.

SEC. 1ST. That your orators, (Ja's K. P. Pritchard being then in life,) with the exception of said Newman, filed, on the 19th day of March, 1869, our original bill in this court against the said Central Bank of Ala., a corporation duly chartered and organized under the laws of the State of Ala., in which, among other things, they alleged that the said Central Bank had theretofore issued a large number of bills to be used and circulated as money, and that a large amount of said bills
62 had theretofore come, in the course of business and trade, into the hands of the complainants of said bills; that complainants therein had presented said bills to said bank, and demanded of the proper officer thereof, payment of the same, in the manner prescribed in the charter of said bank, and that payment of the same was refused, and

the said bills or notes were duly protested; that said bank was insolvent and utterly unable to pay said notes; and orators aver that said cause coming on to be heard, your honor rendered a decree, on the 14th day Dec-, 1869, declaring the said bank insolvent, and ordering its affairs to be wound up and settled; and afterwards appointed your orator Ja's M. Newman receiver of said bank to take charge of the assets thereof, and to close up and settle its affairs, which decree and order will more fully appear from the proceedings in said cause on record in your honor's court, to which reference is hereby made. And your orators file this as an original in the nature of a supplemental bill to that heretofore filed, to which reference has been hereinbefore made.

63 SEC. 2D. That under said order of this court appointing Orator Ja's M. Newman receiver of said bank, said Newman has given bond and has proceeded to collect the assets of the same, and orators aver that assets of said bank are entirely exhausted, the said Newman having sold, under the order of your honor's court, the furniture of said bank; that the proceeds of said sale amounted to not more than four or five hundred dollars, and, that besides said sums now in the hands of said Newman, the said bank has no assets.

SEC. 3D. Orators aver that they are severally the holders and bona-fide owners of the following amounts of the bills or notes issued by said bank, to be issued and circulated as money, and that the same have come into their hands in the course of trade or of their business, to wit: Your orator Jno. C. French holds and owns of said bills the sum of thirty-two thousand three hundred and thirteen dollars; Orator Lawrence A. Spicer, as administrator aforesaid of Ja's K. P. Pritchard,

64 is holder & owner of the same to the amount of six thousand two hundred and sixty-one dollars; Orator Julius C. Phillips is the holder and owner of same to the amount of forty-four hundred dollars; Orator Jno. Gano Winter is the holder and owner of same to the amount of thirty-two hundred and seventy-two dollars; Orator Francis M. Fisk is the holder & owner of same to the amount of nine hundred and twenty-six dollars; Orator J. D. Dawson is the holder & owner of same to the amount of twenty thousand and eighteen dollars; Orator Tho's O. Glascock is the holder and owner of the same to the amount of one hundred and thirty-seven dollars; orator the said Bank of Selma is the holder & owner of same to the amount of eighteen thousand four hundred & fifty-eight dollars.

And orators aver that the bills so owned by them, respectively, have never been paid or redeemed by said bank, and are of various denominations, a minute description of which would render this bill to' large, but they now offer to bring said bills into court for the inspection of your honor and all parties concerned.

65 That a large amount of the said bills of said bank belonging to your orators respectively, to wit, one-fourth thereof was issued and put in circulation by said bank as early as the 1st day Sept., 1855; that another large amount of said bills, to wit, one-fourth thereof, was issued and put in circulation by said bank as early as the 1st day of January, 1856; that another large amount of said bills, to wit, one-eighth, was issued and put in circulation as early as the 1st day of Oct., 1857; that another large amount of said bills, to wit, one-eighth thereof, was issued and put in circulation by said bank as early as the 1st day Dec., 1859; and all the other of said bills so held and belonging to said orators were issued and put in circulation by said bank as early as 1st day of Oct., 1861.

SEC. 4TH. Orators aver that, besides the notes of said bank, so held and owned by your orators, as aforesaid, the said Central Bank has outstanding and unpaid its notes or bills, issued to be used and circulated like those held by your orators, to a large amount, to wit, to the
66 amount of three hundred thousand dollars; that large amount of said bills so issued are held by persons not parties to this bill, and orators pray that they may be allowed to come in and make themselves parties to these proceedings, on contributing to the expense thereof.

SEC. 5TH. Your orators aver that said Central Bank of Ala., having, by your honor's court, been declared insolvent, and the assets of the same in the same being utterly insufficient to pay the bill-holders and creditors of said bank, that each of the stockholders of said bank have become and are, by the laws of the land, and under the provisions of the charter of said bank, liable to pay to the receiver of said bank appointed by your honor's court, as aforesaid, such an amount on each share of stock held by each stockholder, respectively, in said bank, as will, in the aggregate, constitute an amount sufficient to pay the demands of your orators, and of the other bill-holders and creditors of said bank, who may hereafter become parties to these proceedings, and prove their demands.

67 SEC. 6TH. Orators aver that the following persons were, on the 8th day of June, 1865, and are now stockholders in the said Central Bank of Ala., to the number of shares placed opposite their respective names, and reside in the places placed next and opposite their said names, to wit:

Names.	City.	State.	Shares.
Henrietta Adams			9
Sam'l L. Arrington	Montgomery	Alabama	9
Eliza D. Battle	Mobile	Alabama	360
Madaline Battle	Mobile	Alabama	36
James Bragg	Mobile	Alabama	90
Willis P. Bocock			40
Cha's Batre	Mobile	Alabama	5
W'm B. Bell	Montgomery	Alabama	100
Alex. R. Bell	Montgomery	Alabama	100
J. Rhodes Brown			159
C. L. Benson	Baltimore	Maryland	9
Cha's Barnes	Montgomery	Alabama	20
E. K. Carlisle			100
W. L. Coleman	Montgomery	Alabama	21
Sarah Croom	Greene Co	Alabama	300
J. C. Chamberlain	Mobile	Alabama	27
C. T. Chamberlain	Mobile	Alabama	21
68 Robert E. Coxe	Huntsville	Alabama	18
George Cleaveland	Mobile	Alabama	173
J. C. Dubose	Mobile	Alabama	61
Orlis Dyer	New York	New York	549
W'm Fowler	Montgomery	Alabama	100
W. A. Furgerson			19
Jones Fuller	Mobile	Alabama	38
George Goldthwaite	Montgomery	Alabama	53
John H. Garner	Mobile	Alabama	54
Sam'l M. Gowdey			180
Ja's S. Griffin			100
Joseph Gotter	Montgomery	Alabama	13
Eliza Ann Jones	Mobile	Alabama	50
Walter C. Jackson	Montgomery	Alabama	5
Mary C. Ezard	Mobile	Alabama	98
Pollard J. Kimball	Mobile	Alabama	18
Henry P. Lee	Montgomery	Alabama	25
Henry Lyons			80
Lewis Whiting			60
Lehman Bro's	New York	New York	170
E. H. Metcalfe	Montgomery	Alabama	50
Wm. Marks	Montgomery	Alabama	10
Geo. W. Matthews	Montgomery	Alabama	120
Benj. H. Micon	Montgomery	Alabama	164
Cha's P. May	Montgomery	Alabama	50

Name.	City.	State.	Shares.
Montgomery Mills Co	Montgomery	Alabama	96
Mary J. Metcalfe	Montgomery	Alabama	50
69 Julius Norton	Montgomery	Alabama	25
Geo. W. Noble	Montgomery	Alabama	88
Lewis Owen	Montgomery	Alabama	18
Charles T. Pollard	Montgomery	Alabama	200
Pollard & Metcalfe	Montgomery	Alabama	40
John Reynolds	Mobile	Alabama	45
Wm H. Ross	Mobile	Alabama	28
Murray F. Smith	New York	New York	219
H. A. Shroder	Mobile	Alabama	50
Rob't W. Smith	Mobile	Alabama	152
Annie Battie Scott	Mobile	Alabama	90
Wm Taylor	Montgomery	Alabama	100
W. L. Trevit	Mobile	Alabama	64
George W. Tarlton	Mobile	Alabama	35
I. T. Tichenor	Montgomery	Alabama	12
Marianna Wolff	Mobile	Alabama	90
Henry Watson	Mobile		198
Sam'l Waffle	Mobile		80
Eliza Ann Williams	Montgomery		230
F. H. Warren	Montgomery		20
Mary J. Robinson	Montgomery		25
Geo. G. Prentice	Mobile		
Matthew Strema		France	9

SEC. 7TH. Orators aver that the persons named in the last above paragraph as stockholders are all above the age of twenty-one years;
70 that they are informed there are other stockholders in said bank than those made defendants to this bill, but they aver that such other stockholders are dead or insolvent, and if dead, that their estates are insolvent, and they are, therefore, not made parties to this bill. Orators pray that the parties defendants to this bill may discover, if they know, the name and residence of any solvent stockholder in said bank, and that such stockholder be made a party defendant to this bill.

SEC. 8TH. Your orators charge that many of the stockholders, whose names are set out in paragraph six of this bill, knowing that said bank was utterly insolvent, and unable to pay its bills issued by it to circulate as money, as aforesaid, have combined and confederated with other persons to your orators unknown, and have attempted to transfer to such persons the stock so held by them in said bank aforesaid, with the view and intent of ending the liability which devolved on them as stockholders to the holders of the bills of said bank, and of transferring such responsibility and liability to persons wholly irresponsible;
71 and such stockholders pretend they are not liable to your orators, and other bill-holders and creditors at large of said bank; whereas your orators charge the truth to be that such transfers were bona fide; that they were made with the view of delaying, hindering, and preventing the collection of the demands of your orators and of the other bill-holders, and the creditors at large of said bank; that said transfers, respectively, were made either voluntarily and entirely without consideration, or upon a very trifling and inadequate consideration, and were made to persons, as your orators are informed, wholly irresponsible, and out of whom nothing can be made by legal process, and orators expressly charge that all transfers of the stock of said bank made by defendants on and after the 8th day of June, 1865, were made in bad faith, with the view of defeating the collection of your orators' demands, and the demands of the other bill-holders, and the creditors at large of said bank, and constitute in law no valid excuse why the stockholders should not respond to the just demands of your orators and the other bill-holders and creditors of said bank.

72 SEC. 9TH. Orators charge that the whole amount of the stock of

said bank is a large amount, to wit, the sum of nine thousand shares, of one hundred dollars each.

SECTION 10TH. That in each of the years 1856, 1857, 1858, 1859, 1860, 1861, 1862, 1863, 1864, and 1865, large dividends were declared by said bank, and divided among the stockholders of the same; and the said several stockholders herein beforenamed received said dividends so declared in proportion to the number of shares of stock held by them respectively, in said bank; and large sums of money, in each of said years, were received by said stockholders from said bank, as dividends on their said stock, to wit, three hundred thousand dollars, or other large sum, in each of said years; that the dividends so declared of said bank, in said several years, were also divided among, and received by, the following persons, who either are now, or were at the time of receiving said dividends, stockholders in said bank, according to the number of shares in said bank held by each respectively, to wit: W. B. &
A. R. Bell, a firm in the city of Montgomery, Ala., composed of
73 W'm B. Bell and Alexander R. Bell; Samuel G. Battle, of the city
of Mobile, Ala.; W. W. Allen, of said last-named city and State; Jno. Whiting, now deceased, of whose estate W'm H. Graves is the administrator, and Elizabeth Whiting the administratrix, both residing in the city of Montgomery, Ala.; Andrew J. Noble, T. B. Bethea, A. F. Given, Smith Cullom & Co., a firm composed of Smith Cullom, residing in Mobile, and of W'm O. Baldwin and Geo. B. Holmes, residing in the city of Montgomery, all in the State of Alabama; W'm Taylor, residing in the city of Montgomery, Ala.; Jno. Peden, residing in the county of , Alabama; Jno. A. Winston & Co., a firm composed of Jno. A. Winston and Joel L. Jones, of the city of Mobile, Ala.; James R. Powell, Josiah Morris, and Tho's Joseph, all of the city of Montgomery, Ala.

Orators aver and charge that the payment of said several dividends so declared in each of the said years, and the reception by said stockholders in said bank, was in fraud of the rights of complainants as holders of said bills; that the capital stock of said bank, and the assets
of same, constituted a trust-fund in the hands of said bank for
74 the payment of the holders of its bills; that each of the stock-
holders who so received said dividends well knew, at the time of the reception of the same, that said bills of said bank were outstanding and unpaid; that, at the time of the declaration and reception of said dividends, the said bank had not means of gold or silver, or other available assets, to pay off and discharge the said bank's bills so outstanding and unpaid at the respective times of declaration and reception of said dividends, and that the funds of said bank so received by said stockholders, respectively, were trust-funds, held as a trust for the payment of said bills so outstanding and unpaid at the time each of them respectively received the said dividends.

Orators charge that the several persons named as present or past stockholders in said bank, who have so received said dividends as aforesaid, are liable in equity to account to orators as said bill-holders for the several amounts each of said stockholders have so received as
dividends from said bank.

75 SEC. 11TH. Orators aver that said firm of Lehman Bros., mentioned in paragraph six of this bill, as residing in the city and State of New York, and as owning one hundred and seventy shares of the stock of said bank, is composed of Emanuel Lehman & Myer Lehman. To the end therefore that the said defendants may show why your orators should not have the relief hereby prayed, and may upon

their respective oaths, and according to the best and utmost of their respective knowledge, remembrance, information, and belief, full, true, direct, and perfect answer make to such of the statements or several interrogatories hereinafter numbered and set forth, as by the note hereunder written they are respectively required to answer, that is to say:

Interrogatory 1st. Were you or not a stockholder in the Central Bank of Alabama on the eight' day of June, 1865?

Interrogatory 2d. If you state you were a stockholder in said bank at said time, state how many shares of stock you held at said time.

76 Interrogatory 3rd. Was said bank solvent or insolvent at said date? Had it, at said date, means of payment in coin, or in lawful currency of the United States, its outstanding bills or notes made and issued by it to be used and circulated as money?

Interrogatory 4th. Did you or not regard said bank as insolvent on the eight' day of June, 1865?

May it please your honor to grant unto your orators the State's writ of subpœna, directed, &c., and commanding the persons named in the sixth paragraph of this bill as present stockholders in said bank, and the persons named in the tenth paragraph of this bill, as either having been or as being at present stockholders in said bank, and as having received dividends from the same, to wit: W. B. & A. R. Bell, a firm composed of W'm B. Bell & Alex. R. Bell; Samuel G. Battle; W. H. Graves, as administrator, and Elizabeth Whiting, as administratrix, of the estate of Jno. Whiting, deceased; Andrew J. Noble, T. B. Bethea, A. F. Given; Smith Cullum & Co., a firm composed, as aforesaid, of Smith Cullum, William O. Baldwin, and Geo. B. Holmes; W'm

77 Taylor, Jno. Peden; Jno. A. Winston & Co., a firm composed, as aforesaid, of Jno. A. Winston & Joel L. Jones; Ja's R. Powell, Josiah Morris, Tho's Joseph—to answer, plead, or demurr to this your orators' bill of complaint, within the time named in said subpœna.

Orators pray that it may be referred to the register of your honor's court to take an account of the amount due by said bank, to orators and any other bill-holders of said bank, who may hereafter come into this court and prove their claims and contribute to the expense of this suit, and also of the amount due to the creditors at large of said bank; that it also be referred to register, to ascertain the amount of dividends received by each defendant to this bill on the stock now or heretofore held by such defendant in said bank, and what amount of stock each defendant to this bill now holds in said bank, and what amount after the collection of said dividends should be paid to the receiver, J. M. Newman, by each stockholder in said bank, on each share of stock held

78 therein by such stockholders in order to constitute in the aggregate a sum sufficient to pay the demands of your orators, and of the other bill-holders, and the creditors at large of said bank, who shall come in and prove their claims as aforesaid. And orators pray that all necessary and proper orders be made by your honor, allowing and admitting the holders of the bills of said bank, issued by it to circulate as money, and the creditors at large thereof to come in and prove their demands, & will adjust the pro-rata amount to be contributed by them to the expense of this suit.

And that your honor will make all such further orders as shall be necessary to obtain from the defendants to this bill the dividends received by them, as aforesaid, and from the defendants to this bill who are now stockholders in said bank, such an amount to be apportioned among them as shall be required to pay the demands of your orators, as aforesaid, and such other bill-holders as shall come in and prove their

claims, as aforesaid, and such other demands as shall be ascertained
79 to be due and owing from said bank to creditors who may come in and prove their claims, as aforesaid; that upon the final hearing of this cause your honor will decree distribution and payment of the money so collected among the several creditors of said bank, who shall have proved their demands, as aforesaid, according to the rights of all parties, first paying the notes and obligations issued by said bank for circulation as money, which, by its charter, have a priority over the other debts owing by said bank, and that your orators may have all such other and further or different relief, as the nature and circumstances of their cause may require, and as to equity shall seem meet; and they will ever pray, &c.

CHILTON & THORINGTON,
WATTS & TROY,
MORGAN & LAPLEY,
WALKER & MURPHEY,
Sol's for Complainants.

80 Each defendant is required to answer, on oath, each paragraph of the foregoing bill, from one to eleven, inclusive, and each of the interrogatories from one to four, inclusive.

CHILTON & THORINGTON,
WATTS & TROY,
ELMORE & GUNTER,
WALKER & MURPHEY,
MORGAN & LAPSLEY, &c.

Filed May 29th, 1872.

E. C. V. BLAKE, *Clerk.*

81 * * * * * * *

May 29, 1872.

JOHN F. BAILEY, ASSIGNEE OF FOWLER & Sommerville,
vs.
CHARLES T. POLLARD. } 1803.

This day came the parties, by their attorneys, and thereupon, came a jury of twelve good and lawful men, to wit: , and eleven others, who being duly elected, empannelled, sworn, and charged well and truly to try the issues joined, and a true verdict to render according to the evidence, upon their oaths do say: We the jury find all the issues in favor of the plaintiff, and assess the plaintiff's damages at sixteen thousand nine hundred and nine dollars. It is therefore considered by the court that the plaintiff recover of the defendant sixteen thousand nine hundred & nine dollars, the damages assessed by the jury, as aforesaid, and also the costs incurred or expended in this cause, for all which execution may issue.

* * * * * * *

their respective oaths, and according to the best and utmost of their respective knowledge, remembrance, information, and belief, full, true, direct, and perfect answer make to such of the statements or several interrogatories hereinafter numbered and set forth, as by the note hereunder written they are respectively required to answer, that is to say:

Interrogatory 1st. Were you or not a stockholder in the Central Bank of Alabama on the eight' day of June, 1865?

Interrogatory 2d. If you state you were a stockholder in said bank at said time, state how many shares of stock you held at said time.

76 Interrogatory 3rd. Was said bank solvent or insolvent at said date? Had it, at said date, means of payment in coin, or in lawful currency of the United States, its outstanding bills or notes made and issued by it to be used and circulated as money?

Interrogatory 4th. Did you or not regard said bank as insolvent on the eight' day of June, 1865?

May it please your honor to grant unto your orators the State's writ of subpœna, directed, &c., and commanding the persons named in the sixth paragraph of this bill as present stockholders in said bank, and the persons named in the tenth paragraph of this bill, as either having been or as being at present stockholders in said bank, and as having received dividends from the same, to wit: W. B. & A. R. Bell, a firm composed of W'm B. Bell & Alex. R. Bell; Samuel G. Battle; W. H. Graves, as administrator, and Elizabeth Whiting, as administratrix, of the estate of Jno. Whiting, deceased; Andrew J. Noble, T. B. Bethea, A. F. Given; Smith Cullum & Co., a firm composed, as aforesaid, of Smith Cullum, William O. Baldwin, and Geo. B. Holmes; W'm

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Orators pray that it may be referred to the register of your honor's court to take an account of the amount due by said bank, to orators and any other bill-holders of said bank, who may hereafter come into this court and prove their claims and contribute to the expense of this suit, and also of the amount due to the creditors at large of said bank; that it also be referred to register, to ascertain the amount of dividends received by each defendant to this bill on the stock now or heretofore held by such defendant in said bank, and what amount of stock each defendant to this bill now holds in said bank, and what amount after the collection of said dividends should be paid to the receiver, J. M. Newman, by each stockholder in said bank, on each share of stock held

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And that your honor will make all such further orders as shall be necessary to obtain from the defendants to this bill the dividends received by them, as aforesaid, and from the defendants to this bill who are now stockholders in said bank, such an amount to be apportioned among them as shall be required to pay the demands of your orators, as aforesaid, and such other bill-holders as shall come in and prove their

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79 to be due and owing from said bank to creditors who may come in and prove their claims, as aforesaid; that upon the final hearing of this cause your honor will decree distribution and payment of the money so collected among the several creditors of said bank, who shall have proved their demands, as aforesaid, according to the rights of all parties, first paying the notes and obligations issued by said bank for circulation as money, which, by its charter, have a priority over the other debts owing by said bank, and that your orators may have all such other and further or different relief, as the nature and circumstances of their cause may require, and as to equity shall seem meet; and they will ever pray, &c.

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Filed May 29th, 1872.

E. C. V. BLAKE, *Clerk.*

81 * * * * * * *

May 29, 1872.

JOHN F. BAILEY, ASSIGNEE OF FOWLER & Sommerville,
vs.
CHARLES T. POLLARD. } 1803.

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And that your honor will make all such further orders as shall be necessary to obtain from the defendants to this bill the dividends received by them, as aforesaid, and from the defendants to this bill who are now stockholders in said bank, such an amount to be apportioned among them as shall be required to pay the demands of your orators, as aforesaid, and such other bill-holders as shall come in and prove their

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JOHN F. BAILEY, ASSIGNEE OF FOWLER & Sommerville,
vs.
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* * * * * * *

THE UNITED STATES OF AMERICA, *ss*:

District court of the United States for the middle district of Alabama, May term, 1872.

82 JOHN F. BAILEY, AS ASSIGNEE IN BANKruptcy of the estate and effects of Fowler & Sommerville,
vs.
CHARLES T. POLLARD.

Be it remembered that this cause was called for trial on the third day of said term of said court. The defendant demurred to the declaration of the plaintiff, the causes of the demurrer being those assigned in the demurrer on file. The court overruled the said demurrer of the defendant, and defendant excepted thereto. The defendant then filed a plea in abatement, which is the plea in abatement on file. The plaintiff demurred to the defendant's said plea in abatement, the causes of demurrer being those assigned in the demurrer on file. The court sustained the demurrer of the plaintiff to the defendant's said plea in abatement, and defendant excepted thereto. The defendant then filed a plea of the general issue and three special pleas, the said special pleas numbered, respectively, second and third and fourth, being the same special
83 pleas on file. The defendant demurred seperately and *and* severally to each of said special pleas, and, by consent, the demurrer on file to the plea in abatement and the causes therein assigned were taken and considered as the demurrer and causes of demurrer to the first special plea numbered second, & the causes of demurrer to each of said special pleas numbered third and fourth being those assigned, respectively, in each of said demurre's on file. The court sustained each of the said demurrers to said special pleas, and the defendant excepted seperately and severally to each ruling and decision of the court sustaining each of said demurrers to said special pleas.

The plaintiff joined issue on the plea of the general issue. A jury have been empannelled and sworn to try the issues so joined. On the trial the plaintiff read in evidence the bills of the Central Bank in the declaration described and mentioned, and also an agreed statements of facts, which is made part of this bill of exceptions, and is as follows:

84 First. That the plaintiff in this cause, John F. Bailey, is the duly elected and qualified assignee in bankruptcy of William Fowler and R. H. Sommerville, late partners in business under the firm-name of Fowler & Sommerville, and that said Bailey, as such assignee, is the holder and owner of the bills or notes in the complaint in this cause.

Second. That the defendant in this cause, said Charles T. Pollard, is the holder and owner of two hundred shares of the capital stock of the Central Bank of Alabama of the nominal value of one hundred dollars per share, (the value fixed by the charter of said bank,) and that said Pollard was the holder and owner of said stock before said Fowler & Sommerville became the holders and owners of said bills or notes.

Third. That said bank has had no place of business where, or officers or agents of whom, a demand for the payment of the notes or bills described in the complaint could have been made since the 24th day of March, 1869, and since said Fowler & Sommerville became the holders and owners of said notes or bills.

85 Fourth. That before the institution of this suit, said John F.

Bailey, as assignee in bankruptcy as aforesaid, made a demand of said defendant, Charles T. Pollard, as the owner and holder of the stock of said bank, as aforesaid, for the payment of said notes or bills described in the complaint, and that said Charles T. Pollard refused to pay the same or any part thereof.

Fifth. It is admitted that said Pollard has never paid off or discharged any liability which may have attached to him under the charter of said bank by reason of being the owner and holder of said two hundred shares of the stock of said bank.

Sixth. It is agreed that the paper on file in the district court of the United States for the middle district of Alabama, purporting to be a copy of the charter of said bank, is a true copy of the said charter, and may be deemed and taken to be part of the complaint in this cause, as if set out at full length.

Seventh. It is admitted that the whole capital stock of said
86 bank subscribed for amounts to nine thousand shares, and the whole amount of bills or notes of said bank outstanding and unpaid is seven hundred thousand dollars. This was all the evidence in the cause which was adduced on the trial, and upon the foregoing evidence the court gave to the jury the following charge: "That, under the law and evidence adduced in this case, the plaintiff was entitled to recover the amount due on the face of the bills, without interest." To the charge of the court thus given the defendant excepted.

All the foregoing exceptions were tendered and taken during the progress of the trial, and while the jury was at the bar. And this is presented as the defendant's bill of exceptions, and allowed and signed and sealed as such by the court, the Honorable Richard Busteed presiding and constituting the court, this 3rd day of June, A. D. 1872.

RICHARD BUSTEED, [SEAL.]
Judge, &c.

We, the counsel and attorneys in the above-entitled cause of the respective parties, agree upon the foregoing bill of exceptions,
87 and that the same may be signed by the presiding judge as such.

STONE AND CLOPTON,
Att'ys for Defendant.
ELMORE AND GUNTER, &
J. M. CHILTON,
For Plaintiff.

Filed in office this the 4th day of June, 1872.

E. C. V. BLAKE, *Clerk.*

88 UNITED STATES OF AMERICA, *ss:*

To John F. Bailey, as assignee in bankruptcy of the estate and effects of Fowler & Sommerville, a firm lately composed of William Fowler and Robert H. Sommerville, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at Washington on the first Monday of December next, pursuant to a writ of error filed in the clerk's office of the district court of the United States for the middle district of Alabama, wherein Charles T. Pollard is plaintiff in error and you are defendants in error, to show cause, if any there be, why the judgment rendered, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Salmon P. Chase, Chief Justice of the said

Supreme Court of the United States, this the 31st day of May, in the year of our Lord one thousand eight hundred and seventy-two.

[SEAL.] RICHARD BUSTEED,
Judge, &c.

89 Executed by serving a copy of the above citation on John M. Chilton, the attorney of record of the plaintiff, this 5th day of June, 1872.

R. W. HEALY,
U. S. Marshal.

Before me, E. C. V. Blake, clerk of the district court of the United States for the middle district of Alabama, personally came R. W. Healy, who, being duly sworn, makes oath that he served a copy of this citation on John M. Chilton, an attorney of record of the plaintiff, on the 5th day of June, 1872.

R. W. HEALY,
U. S. Marshal Middle Dist. Ala.

Sworn to and subscribed before me this 7th day of November, A. D. 1872, at Montgomery.

E. C. V. BLAKE, *Clerk.*

90 (Indorsed:) 1803. Jno. F. Bailey, as assignee of Fowler & Sommerville, vs. Charles T. Pollard. Original citation. Filed in office the 4th day of June, A. D. 1872. Copy of this citation filed at the same time. E. C. V. Blake, clerk.

91 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judge of the district court of the United States for the middle district of Alabama, greeting:

Because in the record and proceedings as also in the rendition of the judgment of a plea which is in the said district court before you, between John F. Bailey, as assignee in bankruptcy of the estate and effects of Fowler & Sommerville, a firm lately composed of William Fowler and Robert H. Sommerville, plaintiff, and Charles T. Pollard, defendant, a manifest error hath happened, to the great damage of the said Charles T. Pollard, defendant, as by his complaint appears:

We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme
92 Court, together with this writ, so that you have the same at Washington, on the first Monday of December next, in the said Supreme Court, to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein, to correct that error, what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Salmon P. Chase, Chief Justice of the said Supreme Court, the first Monday of December, in the year of our Lord one thousand eight hundred and seventy-one.

[SEAL.] E. C. V. BLAKE,
Clerk U. S. District Court,
Middle District of Alabama.

93 (Indorsed:) 1803. Jno. F. Bailey, as assignee of Fowler & Sommerville, vs. Charles T. Pollard. Original. Writ of error. Filed

in office this the 4th day of June, A. D. 1872. C. V. Copy of this writ of error filed at the same time. E. C.V. Blake, clerk.

94 Supreme Court of the United States.

JOHN F. BAILEY, AS ASSIGNEE IN BANKRUPTCY of Fowler & Sommerville, plaintiff,
versus
CHARLES T. POLLARD, DEFENDANT.

Know all men by these presents that we, Charles T. Pollard, Josiah Morris, and William R. C. Cooke, are held and firmly bound unto John F. Bailey, as assignee in bankruptcy of Fowler & Sommerville, in the sum of thirty-three thousand eight hundred and eighteen dollars, to be paid to the said John F. Bailey, as assignee as aforesaid, his executors or administrators, or successor as assignee, to which payment well and truly to be made, we bind ourselves and each of us, our and each of our heirs, executors, and administrators, jointly and severally, firmly
95 by these presents, sealed with our seals and dated this the thirty-first day of May, anno Domini one thousand eight hundred and seventy-two.

Whereas the above-named Charles T. Pollard hath prosecuted a writ of error to the Supreme Court of the United States, to reverse the judgment rendered in the above-entitled suit, by the district court of the United States for the middle district of Alabama:

Now, therefore, the condition of the above obligation is such, that if the above-named Charles T. Pollard shall prosecute his said writ of error to effect, and answer all damages and costs if he shall fail to make good his plea, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

(Signed) CHARLES T. POLLARD. [SEAL.]
JOSIAH MORRIS. [SEAL.]
W. R. C. COOKE. [SEAL.]

96 I approve of the foregoing bond, as to its form and sufficiency. May 31st, 1872.

(Indorsed:) 1803. John F. Bailey, as assignee of Fowler & Sommerville, vs. Charles T. Pollard. Copy. Supersedeas bond. Filed in office this 4th day of June, 1872. E. C. V. Blake, clerk.

97 UNITED STATES OF AMERICA,
Middle District of Alabama, ss:

I, Elliott C. V. Blake, clerk of the district court of the United States for the middle district of Alabama, do hereby certify that the writings annexed to this certificate are true copies of their respective originals, on file and remaining of record in my office, and the original writ of error and citation, copies of which are on file in my office.

In testimony whereof I have caused the seal of the said court to be hereunto affixed at the city of Montgomery, in the middle district of Alabama, this twenty-eighth day of November, in the year of our Lord one thousand eight hundred and seventy-two, and of the Independence of the said United States the ninety-seventh.

[SEAL.] E. C. V. BLAKE, *Clerk.*

(Indorsement on cover:) No. 543. Charles T. Pollard, plaintiff in error, vs. John F. Bailey, assignee in bankruptcy of Fowler & Sommerville. M. Alabama D. C. U. S. Filed 4th December, 1872.

Supreme Court of the United States, this the 31st day of May, in the year of our Lord one thousand eight hundred and seventy-two.

[SEAL.] RICHARD BUSTEED,
Judge, &c.

89 Executed by serving a copy of the above citation on John M. Chilton, the attorney of record of the plaintiff, this 5th day of June, 1872.

R. W. HEALY,
U. S. Marshal.

Before me, E. C. V. Blake, clerk of the district court of the United States for the middle district of Alabama, personally came R. W. Healy, who, being duly sworn, makes oath that he served a copy of this citation on John M. Chilton, an attorney of record of the plaintiff, on the 5th day of June, 1872.

R. W. HEALY,
U. S. Marshal Middle Dist. Ala.

Sworn to and subscribed before me this 7th day of November, A. D. 1872, at Montgomery.

E. C. V. BLAKE, *Clerk.*

90 (Indorsed:) 1803. Jno. F. Bailey, as assignee of Fowler & Sommerville, vs. Charles T. Pollard. Original citation. Filed in office the 4th day of June, A. D. 1872. Copy of this citation filed at the same time. E. C. V. Blake, clerk.

91 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judge of the district court of the United States for the middle district of Alabama, greeting:

Because in the record and proceedings as also in the rendition of the judgment of a plea which is in the said district court before you, between John F. Bailey, as assignee in bankruptcy of the estate and effects of Fowler & Sommerville, a firm lately composed of William Fowler and Robert H. Sommerville, plaintiff, and Charles T. Pollard, defendant, a manifest error hath happened, to the great damage of the said Charles T. Pollard, defendant, as by his complaint appears:

We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme
92 Court, together with this writ, so that you have the same at Washington, on the first Monday of December next, in the said Supreme Court, to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein, to correct that error, what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Salmon P. Chase, Chief Justice of the said Supreme Court, the first Monday of December, in the year of our Lord one thousand eight hundred and seventy-one.

[SEAL.] E. C. V. BLAKE,
Clerk U. S. District Court,
Middle District of Alabama.

93 (Indorsed:) 1803. Jno. F. Bailey, as assignee of Fowler & Sommerville, vs. Charles T. Pollard. Original. Writ of error. Filed

in office this the 4th day of June, A. D. 1872. C. V. Copy of this writ of error filed at the same time. E. C.V. Blake, clerk.

94 Supreme Court of the United States.

JOHN F. BAILEY, AS ASSIGNEE IN BANKRUPTCY of Fowler & Sommerville, plaintiff,
versus
CHARLES T. POLLARD, DEFENDANT.

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95 by these presents, sealed with our seals and dated this the thirty-first day of May, anno Domini one thousand eight hundred and seventy-two.

Whereas the above-named Charles T. Pollard hath prosecuted a writ of error to the Supreme Court of the United States, to reverse the judgment rendered in the above-entitled suit, by the district court of the United States for the middle district of Alabama:

Now, therefore, the condition of the above obligation is such, that if the above-named Charles T. Pollard shall prosecute his said writ of error to effect, and answer all damages and costs if he shall fail to make good his plea, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

(Signed) CHARLES T. POLLARD. [SEAL.]
JOSIAH MORRIS. [SEAL.]
W. R. C. COOKE. [SEAL.]

96 I approve of the foregoing bond, as to its form and sufficiency. May 31st, 1872.

(Indorsed:) 1803. John F. Bailey, as assignee of Fowler & Sommerville, vs. Charles T. Pollard. Copy. Supersedeas bond. Filed in office this 4th day of June, 1872. E. C. V. Blake, clerk.

97 UNITED STATES OF AMERICA,
Middle District of Alabama, ss:

I, Elliott C. V. Blake, clerk of the district court of the United States for the middle district of Alabama, do hereby certify that the writings annexed to this certificate are true copies of their respective originals, on file and remaining of record in my office, and the original writ of error and citation, copies of which are on file in my office.

In testimony whereof I have caused the seal of the said court to be hereunto affixed at the city of Montgomery, in the middle district of Alabama, this twenty-eighth day of November, in the year of our Lord one thousand eight hundred and seventy-two, and of the Independence of the said United States the ninety-seventh.

[SEAL.] E. C. V. BLAKE, *Clerk.*

(Indorsement on cover:) No. 543. Charles T. Pollard, plaintiff in error, vs. John F. Bailey, assignee in bankruptcy of Fowler & Sommerville. M. Alabama D. C. U. S. Filed 4th December, 1872.